

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

Q TRUCKING, INC.  
Respondent

Case Nos.: I-00-11075  
I-00-11236

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-11075) served May 18, 2001, the Government charged Respondent Q Trucking, Inc. with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines from more than three (3) minutes while parked, stopped or standing. The Notice of Infraction alleged that the violation occurred on May 10, 2001 in the 1200 block of 5<sup>th</sup> Street, N.E. and sought a fine of \$500.00.

Respondent failed to answer the Notice of Infraction within twenty (20) days of service (fifteen (15) days plus five (5) days for service by mail pursuant to D.C. Code §§ 6-2712(e), 6-2715). Accordingly, on June 19, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$500.00 pursuant to D.C. Code § 6-

2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f). The Government served the second Notice of Infraction (00-11236) on July 2, 2001.

Respondent failed to timely respond to the second Notice of Infraction. D.C. Code § 6-2712(f). Accordingly, on August 14, 2001, this administrative court issued a Final Notice of Default assessing Respondent an additional statutory penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(B), and scheduling an *ex parte* proof hearing for September 12, 2001. *See* D.C. Code § 6-2713.

On August 30, 2001, this administrative court received Respondent's plea of Admit to the charge of violating 21 DCMR 900.1, along with a request for a reduction or suspension of the statutory penalties. Respondent submitted a check (#12954) in the amount of \$500.00 with its plea. In a letter accompanying its plea, Respondent explained that it had mailed a check (#12825), presumably to this administrative court, on June 1, 2001, but the check had not been cashed. Respondent stated: "We respectfully request an abatement of the \$1,000.00 penalty since Q Trucking takes all notices seriously and would not intentionally ignore such a notice(s)." No other check from Respondent in these cases has been received by this administrative court.

By order dated September 6, 2001, this administrative court permitted the Government an opportunity to respond to Respondent's request within ten (10) calendar days of the service date of the Order. Because no response has been received by the Government within the allotted time, this matter is now ripe for adjudication.

## **II. Findings of Fact**

1. By its plea of Admit, Respondent has admitted violating 20 DCMR 900.1 on May 10, 2001.
2. On May 10, 2001, Respondent's truck idled its engine while parked for more than three (3) minutes in the 1200 block of 5<sup>th</sup> Street, N.E.
3. Respondent mailed a \$500.00 payment by check #12825 for Notice of Infraction 00-11075 on June 1, 2001. Respondent has not, however, identified to whom payment was made, and this administrative court did not receive such payment.
4. On August 30, 2001, this administrative court received a \$500.00 payment from Respondent by check #12954 for Notices of Infraction 00-11075 and 00-11236. In support of its accompanying request for a reduction or suspension of the assessed statutory penalties, Respondent stated that it "takes all notices seriously and would not intentionally ignore such a notice(s)."

## **III. Conclusions of Law**

1. Respondent violated 20 DCMR 900.1 on May 10, 2001. A fine of \$500.00 is authorized for that violation, and Respondent has paid that fine in full. *See* 16 DCMR 3224.3(aaa).
2. Respondent has requested a reduction or suspension of the assessed statutory penalty. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a

Notice of Infraction and fails, without good cause, to answer that Notice of infraction within the established time limits, the respondent shall be liable for a penalty equal to the applicable fine, and a second Notice of Infraction is issued. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). If a respondent similarly fails to answer the second Notice of Infraction, the statutory penalty doubles. D.C. Code § 6-2704(a)(2)(B). All of this information is contained as a warning in bold lettering on the front of each Notice of Infraction, and it reflects the requirements of District of Columbia law.

3. Based on this record, Respondent has not established good cause for failing to timely respond to the Notices of Infraction. As this administrative court recently discussed in *DOH v. Akin and Porter Produce, Inc.*, OAH No. I-00-11077 at 4-5 (Final Order, August 2, 2001), the law places the burden of ensuring the timely receipt of a respondent's plea on the respondent. *See also* D.C. Code § 6-2712(e). Moreover, despite the issuance of the June 19<sup>th</sup> default order which put Respondent on notice that its June 1<sup>st</sup> plea and payment had not been received by this administrative court, Respondent waited until two (2) weeks after the August 14<sup>th</sup> final default order was issued to re-submit its plea and payment. Accordingly, the statutory penalty will remain as assessed at \$1,000.00. *See* D.C. Code §§ 6-2704(a)(2)(A), 6-2704(a)(2)(B), 6-2712(f).

#### **IV. Order**

Based on the foregoing findings of fact and conclusions of law, and upon the entire record of this case, it is, therefore, this \_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Respondent shall pay a total of **ONE THOUSAND DOLLARS** (\$1,000.00) in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **9/25/01**

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Mark D. Poindexter  
Administrative Judge